

Senate File 2294 - Introduced

SENATE FILE 2294
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3064)

A BILL FOR

1 An Act relating to the authorized activities of auctioneers in
2 conducting a public sale or auction of real estate.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 543B.7, subsection 5, Code 2011, is
2 amended to read as follows:

3 5. The acts of an auctioneer who is not a licensee under
4 this chapter in conducting a public sale or auction, as
5 provided in this subsection.

6 a. The auctioneer's role must be limited to establishing the
7 time, place, and method of an auction; advertising the auction
8 including a brief description of the property for auction and
9 the time and place for the auction; and crying the property at
10 the auction.

11 (1) The auctioneer shall provide in any advertising the
12 name and address of the real estate broker who is providing
13 brokerage services for the transaction and the name of the real
14 estate broker or attorney who is responsible for closing the
15 sale of the property.

16 (2) The real estate broker providing brokerage services
17 shall be present at the time of the auction and, if found to
18 be in violation of this ~~subsection~~ subparagraph (2), shall
19 be subject to a civil penalty of two thousand five hundred
20 dollars.

21 (3) If the auctioneer closes or attempts to close the
22 sale of the property, or otherwise engages in acts defined
23 in sections 543B.3, ~~and~~ 543B.6, or paragraph "b" of this
24 subsection, then the requirements of this chapter do apply to
25 the auctioneer.

26 b. An auctioneer who is not a licensee is expressly
27 prohibited from engaging in the following acts:

28 (1) Contacting the public regarding real property beyond
29 that which is permitted under this subsection, with the purpose
30 of securing or facilitating the sale of such real property.

31 (2) Independently showing property or hosting open houses.

32 (3) Making material and substantive representations
33 regarding title, financing, or closings.

34 (4) Discussing or explaining a contract, lease, agreement,
35 or other real estate document with a prospective buyer or

1 tenant of the real property, with the purpose of securing or
2 facilitating the sale of such real property.

3 (5) Collecting or holding deposit moneys, rent, other
4 moneys, or anything of value received from the owner of real
5 property or from a prospective buyer or tenant, other than
6 fees, commissions, or other consideration paid in exchange
7 for conducting the auction or other acts permitted in this
8 subsection, with the purpose of securing or facilitating the
9 sale of real property.

10 (6) Providing owners of real property or prospective buyers
11 or tenants with advice, recommendations, or suggestions as
12 to the sale, purchase, exchange, rental, or lease of real
13 property, except as to acts permitted for auctioneers under
14 this subsection.

15 (7) Falsely representing in any manner, orally or in
16 writing, that the auctioneer is a licensee under this chapter.

17 c. If an investigation pursuant to this chapter reveals
18 that an auctioneer has violated this subsection or has assumed
19 to act in the capacity of a real estate broker or real estate
20 salesperson, the real estate commission may issue a cease and
21 desist order, and shall issue a warning letter notifying the
22 auctioneer of the violation for the first offense, and impose
23 a penalty of up to the greater of ten thousand dollars or ten
24 percent of the real estate sales price for each subsequent
25 violation.

26 EXPLANATION

27 This bill relates to the authorized activities of
28 auctioneers in conducting a public sale or auction of real
29 estate.

30 The bill modifies the provisions of Code section 543B.7,
31 subsection 5, which excludes the activities of an auctioneer
32 from the licensing provisions governing real estate brokers
33 and salespersons in Code chapter 543B under specified
34 circumstances. The bill clarifies that the exclusion applies
35 to the activities of an auctioneer who is not a licensee under

1 the Code chapter.

2 The bill provides a list of prohibited acts which, if
3 performed by an auctioneer, will subject the auctioneer
4 to the licensing provisions. They include contacting the
5 public regarding real property beyond that authorized in
6 the subsection with the purpose of securing or facilitating
7 the sale of real property; independently showing property
8 or hosting open houses; making material and substantive
9 representations regarding title, financing, or closings;
10 discussing or explaining a contract, lease, agreement, or other
11 real estate document with a prospective buyer or tenant of real
12 property, with the purpose of securing or facilitating the sale
13 of the real property; collecting or holding deposit moneys,
14 rent, other moneys, or anything of value received from the
15 owner of real property or from a prospective buyer or tenant,
16 other than fees, commissions, or other consideration paid in
17 exchange for conducting the auction or other permitted acts
18 with the purpose of securing or facilitating the sale of real
19 property; providing owners of real property or prospective
20 buyers or tenants with advice, recommendations, or suggestions
21 as to the sale, purchase, exchange, rental, or leasing of real
22 property, except as to acts permitted for auctioneers under the
23 subsection; and falsely representing in any manner, orally or
24 in writing, that the auctioneer is a licensee under the Code
25 chapter.

26 A violation of the bill's provisions is a simple
27 misdemeanor. A simple misdemeanor is punishable by confinement
28 for no more than 30 days or a fine of at least \$65 but not more
29 than \$625 or by both.